

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-cv-1731-MSK-OES

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff, and

LEIGH ANN ORNELAS,

Plaintiff/Intervenor,

v.

MILGARD MANUFACTURING INCORPORATED, d/b/a MILGARD WINDOWS, a
Washington Corporation,

Defendant.

JOINT MOTION TO AMEND APPROVED CONSENT DECREE

Plaintiff EEOC and Defendant Milgard Manufacturing, Inc., hereby move the Court to approve amendments to the “Consent Decree,” which the Court approved on May 19, 2004. In support thereof, the parties state:

1. In resolution of a Notice of Dispute, served pursuant to Paragraph 63.01 of the “Consent Decree,” Plaintiff EEOC and Defendant Milgard have mutually agreed to amend the “Consent Decree” as follows:

- a. Paragraph 53.04.02, amend to provide that each eligible claimant will receive a check in the amount of two hundred dollars (\$200). Seventy-five dollars (\$75) of the \$200 payment to each Class Member will be drawn from the Class Fund and the remaining one hundred twenty-five dollars (\$125) will be paid by Milgard and not drawn from the Class Fund.

- b. Paragraph 54.02, amend to require objections to be filed within thirty (30) days after the Claimant receives a Notice of Eligibility Determination and Settlement Amount.
- c. The Notice of Eligibility and Settlement Amount (Exhibit H to the “Consent Decree” as originally submitted) has been revised and is attached as Exhibit K.

WHEREFORE, Plaintiff EEOC and Defendant Milgard respectfully request that the Court approve the amendments set forth herein.

Dated: August 25, 2005

Respectfully submitted,

Nancy A. Weeks
Supervisory Trial Attorney

s/ Rita Byrnes Kittle
Rita Byrnes Kittle
Trial Attorney
Phone: 303.866.1347
Fax: 303.866.1375
Email: rita.kittle@eeoc.gov

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Denver District Office
303 E. 17th Ave., Suite 510
Denver, CO 80203

s/ Lawrence W. Marquess
Lawrence W. Marquess
LITTLER MENDELSON, P.C.
1200 17th Street, Suite 1300
Denver, CO 80202-5835
Phone: 303.629.6200
Fax: 303.379.7166
Email: lmarquess@littler.com

Attorneys for Defendant Milgard
Manufacturing, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on August 25, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

LMarquess@littler.com

EWebber@littler.com

rita.kittle@eoc.gov

nancy.weeks@eoc.gov

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s/ Rita Byrnes Kittle

Rita Byrnes Kittle

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Attorney for Plaintiff EEOC



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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**MILGARD CLASS SETTLEMENT FUND ADMINISTRATOR
NOTICE OF ELIGIBILITY AND SETTLEMENT AMOUNT**

[Insert Date]

[Insert Name]
[Insert Address]

RE: Settlement Amount and Important Deadlines

Dear Class Member:

Based on the information you provided on your benefit claim form, the EEOC has determined that **you are eligible to receive a settlement amount presently estimated to be not less than \$11,500.** We will not know the exact amount of your settlement until we know (a) how many claimants accept the settlement; and (b) the outcome of any objections (see the enclosed "Notice of Rights"). We have taken these unknown factors into consideration in estimating your settlement amount, so that it is very unlikely that your final settlement amount will be less than \$11,500. In the unlikely event that your final settlement amount is less than \$11,500, you will receive another notice and have another opportunity to accept or reject the settlement.

To accept the settlement, you must complete the steps described below (see "How To Accept Settlement Amount" below). **You are strongly encouraged to consult with an attorney before making a decision in this matter (see "Advice of an Attorney" below).**

Advice of an Attorney

The **green** form enclosed is an important legal document called "Settlement and Release of Claims". It is your agreement to accept money in exchange for giving up the right to sue Milgard Manufacturing, Inc. and related entities for any and all claims you may have. You will need to complete this form in order to receive your settlement payment. **You are strongly encouraged to consult with an attorney before signing the green form.**

The enclosed check for \$200 is intended to help you pay an attorney to advise you about the meaning of the green form and whether you should sign it in exchange for payment from the settlement fund. The **purple** sheets enclosed are a list of attorneys in Colorado who specialize in employment law and should be able to advise you regarding this matter.

Inquiries about the Settlement and Release of Claims should be directed to the following attorney representing Milgard:

Larry Marquess
LITTLER MENDELSON, P.C.
1200 17th Street, Suite 1300
Denver, Colorado 80202
303-575-5840

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How to Accept Settlement Amount

If you want to accept the settlement you will need to complete all of the following steps:

1. **Fill out and sign the enclosed green form** (Settlement and Release of Claims). By signing the Settlement and Release of Claims, you are agreeing to give up any and all claims related to the issues covered by this lawsuit which you may have against Milgard Manufacturing, Inc. and related entities.
2. **Fill out and sign the enclosed pink Form W-4**, which is required by Milgard to calculate the amount of taxes that will need to be withheld from the wage portion of your settlement payment. Forty percent (40%) of the settlement will be treated as wages, subject to withholding. You will receive a Form 1099 for the remaining sixty percent (60%) of the settlement, which is payment for compensatory damages
3. **Return both the green form** (Settlement and Release of Claims), **and the pink form** (Form W-4) in the enclosed envelope to the following address **before [Insert date]**. We recommend that you select a mailing option that provides you a receipt that the packet has been delivered.

Milgard Class Settlement Fund Administrator
P.O. Box 6847
Broomfield, CO 80021-0015

If you have questions about how to accept the settlement, please contact the Milgard Settlement Fund Administrator toll-free at 1-866-540-4435.

If you fail to complete the steps above before **[insert date]**, it will be assumed that you have rejected the settlement amount, and you will not receive any benefits from this settlement.

Right to Object - Filing Deadline: [insert date]

If you disagree with the settlement amount that has been calculated, you may object by sending a written explanation of why you believe the amount is not acceptable, together with any additional records or other evidence, to the Monitor who has been appointed by the court. ***You are strongly encouraged to consult with an attorney before filing an objection.***

Kathryn Miller
Milgard Monitor
1901 W. Littleton Blvd
Littleton, CO 80120-2058

The deadline for filing objections is **[insert date]**.

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Additional Information

For additional information regarding your rights, please see the enclosed **yellow** “Notice of Rights” document. Information regarding the lawsuit and the settlement is also available from the Milgard Class Settlement Fund Administrator:

Milgard Class Settlement Fund Administrator
P.O. Box 6847
Broomfield, CO 80021-0015

Toll-free number: 1-866-540-4435
Website: www.classactionadmin.com/projects/milgard

You are reminded that you must take action before the deadline of **[insert date]**, otherwise you will not receive any payment from this settlement.

Sincerely,

Milgard Class Settlement Fund Administrator
1-866-540-4435

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ORDER

THE ABOVE-ENTITLED MATTER having come before the Court upon the Joint Motion to Amend Approved Consent Decree, filed by Plaintiff EEOC and Defendant Milgard Manufacturing, Inc., and the Court having considered the Motion and being fully advised in the premises, and good cause appearing therefor;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Joint Motion to Amend Approved Consent Decree is granted and the Consent Decree, previously approved by the Court on May 19, 2004, is amended as detailed in the parties' joint motion.

DATED this _____ day of _____, 2005.

BY THE COURT:

DISTRICT COURT JUDGE